IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5688 OF 2005

Sanil Khandu Adhal ..Petitioner.

Vs.

The State of Maharashtra & Ors. ..Respondents.

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Mr.N.V.Bandiwadekar for the Petitioner.

Mr.M.Thakur, AGP for Respondent Nos.1, 2 and 4.

Mr.S.P.Kadam for Respondent No.3.

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CORAM : F.I.REBELLO &

DR.D.Y.CHANDRACHUD, JJ.

23rd September, 2005.

P.C. :

1. Rule. Heard forthwith.

2. The Petitioner was appointed in the school run by Respondent No.5 initially by order of appointment dated 5th February, 2003 for a period of three months from 5th February, 2003 to 30th April, 2003. The Petitioner thereafter was

appointed by a letter dated 7th June, 2003 as Assistant Teacher for a period of three years from 9th June, 2003 to 30th April, 2006. The management thereafter sought approval. In so far as the Petitioner is concerned, the office of Respondent No.3 viz. the Municipal Council School Board intimated to the Head Mistress that approval shall be valid only after sanction regarding untrained teachers within the backlog from the office of the Deputy Director of Education, Bombay Region, Bombay. The Petitioner thereafter applied for doing diploma that is D.Ed. course. That permission was rejected on the ground that the Petitioner was appointed as Assistant Teacher and as such would not be covered by the Government Resolutions in force. The Petitioner, therefore, has approached this Court for the reliefs as set out in the prayer clauses.

3. On behalf of the contesting Respondents 1, 2 and 4, an affidavit has been filed by Mr.Arun Shrirang Dhawre. It is pointed out that the Petitioner was appointed in violation of the rules as Assistant Teacher in the scale of 3200-85-4900.

The person who can be covered by Government Resolution 27th February, 2003 has to be appointed from the reserved category as Shikshan Sevak with Honorarium of Rs.1,500/- if he is H.S.C. without D.Ed. and Rs.3,000/- for candidates with H.S.C and D.Ed. As the Petitioner's appointment was not a Shikshan Sevak, the Honorarium of Rs.1,500/- as per Government Resolution 27th February, 2003 is inapplicable. Similarly, it is pointed out that Government Resolution dated 5th February, 1999 would not be applicable as the Petitioner was not in service prior to 5th November, 1997.

4. We have heard counsel for the parties. The Head Mistress of the school of Vikas Mandir Primary School is present. Admittedly, the School is a recognised aided school and counsel for Respondent No.3 on instructions received from the Head Mistress of the school intimates that the post is also an aided post. After 2000, Respondent No.5 in a case of an aided school and aided post could not have appointed the Petitioner to the post of Assistant Teacher. It seems therefore that Respondent No.5 committed error in issuing the

letter of appointment dated 7th June, 2003 where in fact the appointment ought to have been as Shikshan Sevak in the honorarium of Rs.1,500/-. Considering that, we direct Respondent No.5 to correct the letter of appointment dated 24th August, 2005 by issuing the designation of the Petitioner as Shikshan Sevak and further to offer him honorarium till such time he acquires D.Ed. qualification of the untrained Shikshan Sevak which is Rs.1,500/-. This exercise to be completed within two weeks from today. On issuance of corrected letter of appointment, the management to apply to Respondent No.3 for approval. Respondent No.3 to pass orders according to law within a period of two weeks thereafter. If Respondent No.3 grants approval to the appointment of the Petitioner, Respondent No.3 to forward the application of the Petitioner for prosecuting the D.Ed. correspondence course to Respondent No.4. Respondent No.4 to decide whether the Petitioner can be granted permission this year and if not possible, to grant permission for the next academic year. Rule made absolute accordingly. There shall be no order as to costs.

(F.I.REBELLO, J.)

(DR.D.Y.CHANDRACHUD, J.)